

May 7, 2003

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0000706**

CHARLES E. PILLON
Code Enforcement Appeal

Location: 15753 Southeast Renton-Issaquah Road

Appellant: **Charles E. Pillon**
15753 Southeast Renton-Issaquah Road
Renton, WA 98059
Telephone: (425) 226-8583

King County: Department of Development and Environmental Services
Code Enforcement Section,
represented by Sheryl Lux
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 205-1525
Facsimile: (206) 296-6604

Office of the Prosecuting Attorney
represented by **Timothy Barnes**
516 3rd Ave., Rm. 0550
Seattle, Washington 98104
Telephone: (206) 296-9015
Facsimile: (206) 296-0191

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:
Department's Final Recommendation:
Examiner's Decision:

Deny the appeal
Deny the appeal
Grant in part,
deny in part

EXAMINER PROCEEDINGS:

Hearing Opened:
Hearing Closed:
2003

April 8, 2003
April 8,

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On November 22, 2002, the King County Department of Development and Environmental Services, Code Enforcement Section, issued a notice and order to Chuck Pillon concerning property located at 15753 Southeast Renton-Issaquah Road. The property is zoned RA-5 and includes two separate tax parcels, an approximately 10 acre lot designated tax no. 0638100031 and a two acre lot with tax no. 0638100045. The properties were cited for an accumulation of inoperable vehicles, vehicle parts, scrap, garbage, junk and debris; parking on non-improved surfaces; storage of vehicles not owned by the property resident, commercial equipment and storage containers; operation of an auto wrecking yard, landfill and yard waste recycling businesses in violation of County codes; placement and occupancy of mobile homes without required permits; placement and occupancy of recreational vehicles in violation of County codes; and clearing and grading without County permits. At the public hearing the staff withdrew the citation for parking and/or storage of more than 8 vehicles, which requirement is not applicable to the RA-5 zone.
2. Mr. Pillon has filed a timely appeal of the notice and order. He does not, however, contest most of the underlying factual allegations put forward by staff. In his appeal statement he characterizes himself as “one who aggressively removes the junk (including old abandoned vehicles) from our streets and byways”, acknowledging his “personal removal of literally scores of junk vehicles from the surrounding community”. He further states that his operation “provides some marginal income for homeless people I shelter occasionally on my property” and that much of the disorganization visible on his property is due to “reliance on too great a part on handicapped helpers who simply couldn’t keep up with the task”. The appeal statement also describes his activities as “large scale recycling”.

Similar statements were contained within a June 6, 2000 letter to the Code Enforcement staff wherein Mr. Pillon relates that “I do indeed accumulate so called solid waste here at my homestead. . . . yard waste, metals and automotive junk as well. . . I have been an aggressive recycler of other people’s junk most of my life.” In this letter Mr. Pillon further states that “I have also housed several homeless men over the years in what you would have to call ‘substandard housing’”.

3. In addition, at the public hearing held on his appeal Mr. Pillon stipulated to the veracity of the photographs taken by staff on his property, while contesting their admissibility as the product of an unlawful search. Thus to the extent that the photographs support the allegations in the notice and order, Mr. Pillon does not contest their accuracy. Mr. Pillon’s position is, then, not so much one of denying that the activities alleged within the notice and order have occurred, but rather a matter of contesting the underlying assumptions of the notice and order that such activities are without social or environmental merit. In this regard,

Mr. Pillon has recognized that the County staff does not have the authority to rewrite County regulations but is obligated to enforce them as they presently exist, but he appears to regard the appeal process as an appropriate forum for publicizing his position that these rules need to be changed.

4. Even so, the appeal raises a handful of factual issues that need to be resolved. First, it was Mr. Pillon's contention that the photographs of his property taken by DDES staff were the product of unlawful searches of his property and should be excluded from the record. But the record does not support his contention that the site visits conducted by DDES staff were unpermitted. On June 7, 2000 Code Enforcement Officer Sheryl Lux visited Mr. Pillon's property, drove up his long driveway to the house (which is neither gated nor posted with a no trespassing sign), met Mr. Pillon at the house and asked his permission to view the property. This permission was granted. A second staff site visit was conducted on November 22, 2002 by Code Enforcement Officer Jeri Breazeal, who was also granted permission by Mr. Pillon to view the site. Finally, a third site visit was conducted by Sheryl Lux and a Water and Land Resources Division employee, at which time Mr. Pillon's adult son consented to the visit. While there could be an argument that Mr. Pillon's son was not independently authorized to consent to entry onto the property, in view Mr. Pillon's willingness to entertain such visits on prior occasions staff was entitled to rely on this later consistent consent as an authorized permission. The fact that prior to June, 2000 Mr. Pillon may have refused permission to other governmental agencies to view the site does not vitiate the consent that he provided to the DDES employees. In like manner, in an investigation pursuant to a civil proceeding the DDES employees were not required to provide Mr. Pillon with a *Miranda* warning prior to their inspection, nor does the possibility of a later criminal enforcement action create a claim of double jeopardy. These concepts apply to the criminal enforcement context and not to a civil penalty proceeding.
5. Mr. Pillon has also challenged the citation within the notice and order that is based on violation of grading code standards on the grounds that his piles of recycled materials do not constitute fill within the meaning of the grading ordinance. We agree with Mr. Pillon on this point to the extent that the grading violations rely on the existence and manipulation of fill on the property. KCC 16.82.050 prohibits grading from occurring without first obtaining a clearing and grading permit. KCC 16.82.020N defines grading as "excavating" or "filling". Other definitions within this section characterize "fill" as "a deposit of earth material" and "excavation" as "the removal of earth material". Thus, the application to the Appellant's property of grading provisions regulating filling and excavation depend for their jurisdictional foundation on the Appellant's manipulation of "earth material".
6. While Mr. Pillon's debris piles no doubt have some dirt mixed into them, the evidence does not support the conclusion that they are primarily earth material. These piles are comprised mostly of yard waste, vehicles and vehicle parts, demolition debris, manure and household garbage. While the yard waste and manure will eventually degrade into compost which is a soils additive, they are not in their original state earth materials. Accordingly, the creation of these waste stockpiles and their manipulation are not grading within the meaning of Chapter 16.82. This means that the citations within the notice and order for grading in excess of 100 cubic yards, fill in excess of three feet in depth and the use of unacceptable fill material are not supported by the evidence of record, and Mr. Pillon is entitled to prevail on these issues.
7. The presence of a road next to the large on-site pond supports the contention that grading has occurred within a regulated sensitive area buffer, and photographs of site runoff from the stockpile areas indicate that adequate erosion control measures have not been implemented. In this regard, it is noted that the provisions of KCC 16.82.100A requiring erosion and sedimentation control apply to any site disturbance, not just clearing and grading.

It is also our conclusion that no violations have been demonstrated on tax parcel 0045, the two acre tract that lies along the site's western edge. The aerial photographs of that portion of the property show an unbroken strip of trees, and the testimony of DDES staff has not identified any cited activities as occurring in this area.

8. There can be no serious doubt that Mr. Pillon is operating a landfill and yard waste recycling business on his property. He has on numerous occasions admitted as much, and the photographic evidence supporting this contention is substantial. The huge compost piles, the various smaller heaps of sorted materials, the sheer scope of the operations, and the use of homeless and handicapped people as workers all attest to the existence of at least a rudimentary business activity. The evidence that Mr. Pillon is operating an auto wrecking yard, however, is less compelling. Certainly, there are myriad wrecked automobiles on the property, as well as trucks, buses and recreational vehicles. But there is no persuasive evidence of a systematic business operation. This is not to suggest that occasionally vehicles and auto parts may not be in fact sold from the Appellant's site, but there is no evidence that this is more than a sporadic occurrence.
9. The case for the remaining citations within the notice and order is largely self-evident. The photographs demonstrate in abundance the existence of inoperable vehicles, vehicle parts, scrap, garbage, junk and debris on all sectors of the larger ten acre parcel. There is no indication that more than a few of the hundred or so inoperable vehicles on the property are parked on impervious surfaces. License plate research done by staff indicates that a significant number of the vehicles on the property are not owned by Mr. Pillon, and his admission to hauling abandoned vehicles off roadways further supports this allegation. The occupancy of mobile homes and recreational vehicles is admitted by Mr. Pillon, and their substandard character is established by the photographs. Although the great majority of wrecked and inoperative vehicles on the site are not visible from the public roadway, they can be seen from the residences located to the south and west of the Pillon property, thus bringing the activity within the regulatory parameters of KCC 23.10.040.

CONCLUSIONS:

1. As noted at the outset, Mr. Pillon's appeal is based more on questions of legal interpretation and policy implementation than factual evidence. The pre-hearing order issued in this proceeding dated February 6, 2003 summarizes most of these issues. To the extent that the issues identified within the pre-hearing order have not been previously resolved within the foregoing findings, we offer the following additional specific conclusions:
 - Recycling for personal use is permitted by County codes provided it occurs on an appropriate scale. See KCC 10.04.080 and 10.08.070. The scale of Mr. Pillon's recycling activities far exceeds the level permitted as individual recycling activity.
 - The presence or absence of environmental or health impacts generated by the materials stockpiled on the Appellant's property is not material to the question of whether such activities are allowed within the RA zone without appropriate permits. Solid waste disposal is a regulated activity under all relevant scenarios and circumstances.
 - It is not a defense to the notice and order that other sites in the vicinity of the Appellant's property may have greater densities per acre of inoperable vehicles. Moreover, the Appellant has made no evidential showing that such is in fact the case. In like manner, the Appellant has presented no legal argument against the County's authority to regulate inoperable vehicles on his parcel based on ownership by other individuals.

- While the assessment of penalties against the Appellant's property is governed by County code, the social and environmental impacts of the Appellant's activities may be considered to some degree in devising appropriate remedial provisions.
2. The evidence of record requires that the notice and order served on Chuck Pillon be sustained as issued on tax parcel 0031 with respect to items 1, 2 as amended, 3, 5 and 6 of the November 22, 2002 notice and order. Item no. 4 within the notice and order is sustained with respect to operation of a landfill and yard waste recycling business and reversed with respect to the operation of an illegal auto wrecking yard. The appeal is granted with respect to item 7 of the notice and order to the extent that the Appellant has been cited for clearing and grading in excess of 100 cubic yards, fill in excess of 3 feet in depth and the use unacceptable fill material. The notice and order is upheld with respect to the remaining sensitive areas and erosion control citations.
 3. The appeal is granted in its entirety with respect to the citations as they apply to tax parcel no. 0045.
 4. Although Mr. Pillon's appeal has been granted in some particulars, the items on which the notice and order has been upheld are more than sufficient to require cessation of the Appellant's solid waste storage and disposal activities and the restoration of the site to a more neat and orderly condition. Staff has submitted to the record a proposed abatement schedule which appears to be in most respects workable. The primary shortcoming of the staff recommendation is that it is based on employing the grading permit as a primary regulatory mechanism to an extent that is not justified by the record. Accordingly, conditions will need to be devised that rely on other enforcement mechanisms, which makes the retention of Hearing Examiner jurisdiction to provide oversight to the process perhaps even more critical. Finally, the timeline proposed by staff for completing the remediation and restoration work seems unrealistically short and has been extended.

DECISION: The appeal of Chuck Pillon is GRANTED with respect to tax parcel 0045, the operation of an auto wrecking yard, and clearing and grading in excess of regulatory thresholds. The appeal is DENIED in all other respects.

ORDER:

1. No penalties shall be assessed against the Appellant or his property as long as he remains in compliance with the requirements and deadlines dated in this order.
2. Within **7 days** of the date of this order the Appellant shall:
 - A. Cease transporting to or receiving at his property inoperable vehicles, mobile homes, vehicle parts, scrap, junk and debris, and solid waste of all types.
 - B. Post the entrance of the property with a "no dumping" sign.
 - C. Terminate the residential occupancy of all vehicles and structures on the property except for the principal residence.
3. Within **45 days** of the date of this order the Appellant shall:

- A. Submit to DDES, the Health Department and other regulatory agencies all permit applications required to legalize any recycling or landfill operations on the property, if such course of action is to be pursued by the Appellant.
 - B. Submit to DDES Code Enforcement staff and the Hearing Examiner a plan and timeline prepared by a licensed civil engineer for removing from the property all inoperable vehicles, vehicle parts, scrap, garbage, junk and debris, and compost piles. If the plan contemplates that removal of solid waste (garbage, junk and debris, and compost piles) will not be completed prior to September 30, 2003, it shall also include an erosion and sedimentation control plan and procedures for securing the site during the winter rainy season. The plan shall provide for removal of all inoperable vehicles, auto parts, mobile homes, recreational vehicles not owned by the Appellant, storage containers, and at least ½ of the solid waste materials by September 30, 2003, with the remainder of the solid waste to be removed no later than September 30, 2004.
 - C. Submit to DDES a grading permit application for the removal of debris from and restoration of the on-site ponds and their regulatory buffers.
 - D. Park all operable vehicles on approved impervious surfaces.
4. The Hearing Examiner shall retain jurisdiction over this proceeding for purposes of assuring compliance with these conditions. The Examiner will schedule a compliance conference approximately 60 days after the date of this order to review the status of Appellant's efforts to meet the requirements of conditions 2 and 3 of this order. DDES staff shall provide at this conference its review regarding the adequacy of any plans and applications submitted by the Appellant. If the Examiner determines that the Appellant has not substantially complied with requirements and conditions 2 and 3, he shall order the immediate imposition of civil penalties and remand all enforcement responsibility to DDES. If substantial compliance has been effected with respect to preliminary requirements, the Examiner shall continue to retain jurisdiction and may modify this order as circumstances require.
5. General terms:
- A. All remediation required by this order shall be completed no later than September 30, 2004. This includes removal from the site of all commercial equipment.
 - B. Compliance with this order requires that the terms and deadlines of all permits and approvals issued to the Appellant under the authority of this order be met in a timely manner.
 - C. Abatement of the violation conditions on the Appellant's property requires that the Appellant submit to DDES on a monthly basis all receipts for off-site legal disposal of all solid waste, vehicles and other materials and structures removed from the property. Failure to submit receipts covering all objects and materials removed from the property will warrant an inference that such removal and disposal were not lawfully executed.
 - D. Following the 60 day review provided for in condition 4, DDES may move the Hearing Examiner at any time for an order determining that the Appellant has fallen out of compliance with the terms of this order. If the Examiner concludes that such terms are not being met, enforcement may be remanded to DDES and penalties imposed on the Appellant as of the date of such determination.

- E. DDES may charge the Appellant for the hourly review and investigation fees provided by code for the plan and site review activities required by this order that are not otherwise covered by permit application fees.
- F. Within 7 days within the date of this order any party may request in writing the modifications of its terms; provided that, such request shall not stay or delay the effect of any deadlines stated herein.

ORDERED this 7th day of May, 2003

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 7th day of May, 2003, by certified mail to the following party:

Charles Pillon
15753 Renton Issaquah Road
Renton, WA 98055

TRANSMITTED this 7th day of May, 2003, to the parties and interested persons of record:

Charles E Pillon
15753 SE Renton-Issaquah Rd
Renton WA 98059

Tim Barnes
Prosecuting Atty's. Office
Civil Division
MS KCC-PA-0550

Elizabeth Deraitus
DDES/LUSD
Code Enf. Supvr.
MS OAK-DE-0100

Sheryl Lux
DDES/LUSD
Code Enforcement
MS OAK-DE-0100

Patricia Malone
DDES/LUSD
Code Enf. Section
MS OAK-DE-0100

Heather Staines
DDES/BSO
Code Enf.-Finance
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision. The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.

MINUTES OF THE APRIL 8, 2003 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0000706.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Timothy Barnes and Sheryl Lux, representing the Department; and Chuck Pillon, the Appellant.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES staff report to the Hearing Examiner
- Exhibit No. 2 Copy of Notice & Order issued November 22, 2002
- Exhibit No. 3 Copy of Notice and Statement of Appeal received December 11, 2002
- Exhibit No. 4 Copy of appeal detail received December 18, 2002
- Exhibit No. 5 Copies of codes cited in the notice and order
- Exhibit No. 6 Copy of letter from Mr. Pillon dated June 6, 2000
- Exhibit No. 7 Copy of violation letter from DDES sent August 2, 2000
- Exhibit No. 8 Copy of letter from Mr. Pillon dated August 18, 2000
- Exhibit No. 9 Copy of KC Health Dept. Notice and Order issued February 2, 2001 and faxed to Sheryl Lux on February 16, 2001
- Exhibit No. 10 Copy of email from Jeri Breazeal stating Mr. Pillon allowed her onto the site on the November 22, 2002 site visit
- Exhibit No. 11 Copy of definitions

- Exhibit No. 12 Aerial photo of subject property taken by Jeri Breazeal on November 22, 2002
- 12a Aerial photo showing location of attached (4) pictures
 - 12b Aerial photo showing location of attached (9) pictures
 - 12c Aerial photo showing location of attached (8) pictures
 - 12d Aerial photo showing location of attached (11) pictures
 - 12e Aerial photo showing location of attached (11) pictures
 - 12f Not submitted
 - 12g Aerial photo showing location of attached (9) pictures
 - 12h Aerial photo showing location of attached (8) pictures
- Exhibit No. 13 Pictures (2) taken by Bill Turner from Guardian One on October 11, 2002
- Exhibit No. 14a-f Pictures taken by Sheryl Lux on December 16, 2002
- Exhibit No. 15a-c Pictures (6) taken by Sheryl Lux on June 22, 2000
- Exhibit No. 16 Aerial photograph from GIS taken in 2000
- Exhibit No. 17 Aerial photograph from USGS (Website) taken in 1990
- Exhibit No. 18 GIS map showing drainage complaints received by Water & Land Resources and elevation changes
- Exhibit No. 19 Report from Sue Clarke re: testing on water samples collected on December 16, 2002
- Exhibit No. 20 Letter from DDES dated December 8, 1993
- Exhibit No. 21 Site map drawing submitted by Mr. Pillon for grading application #3058-35
- Exhibit No. 22 Video from Guardian One taken on October 11, 2002 – to be submitted at hearing

The following exhibits were admitted administratively following the close of the April 8, 2003 hearing:

- Exhibit No. 23 Letter to the Hearing Examiner from Timothy Barnes dated April 17, 2003
- Exhibit No. 24 Memorandum to the Hearing Examiner from Chuck Pillon dated April 29, 2003

SLS:gao
E0000706 RPT